

ARTICLE 28 Disciplinary Actions

Section 1. Authority of the Chief.

The Chief shall have authority to demote and/or suspend not to exceed forty-five (45) calendar days, or indefinitely suspend (as provided for in Chapter 143 of Local Government Code) any Officer for the causes set forth in the Rules and Regulations of the Commission. The Officer may appeal such actions, if any, as provided for herein. Nothing contained herein prevents the Chief and the accused Officer from reaching an agreed settlement on any matter so long as both parties concur in writing in advance of said settlement. Officers suspended for three (3) days or less who appeal the suspension shall not serve the suspension unless a suspension with loss of pay is awarded by an arbitrator.¹

Section 2. Contemplated Disciplinary Action.

Prior to any such disciplinary action, the Officer shall be given notice of contemplated disciplinary action by personal service, stating the action or actions contemplated and the reasons therefore, and notifying the Officer that he may rebut the charges to the Chief, either orally, or in writing, within seven (7) calendar days. If the Chief should be unable to secure personal service of the contemplated disciplinary action after due diligence, service may be made by placing the notice in certified mail addressed to the Officer's last known address along with delivery of the statement to the Association, and proof of such service shall be sufficient to provide notice to the Officer of his right to rebut the contemplated disciplinary action to the Chief.

Section 3. Written Statement of Charges.

After the notice and opportunity for rebuttal provided in the preceding paragraph, the Chief may demote, suspend, or indefinitely suspend an Officer by service in accordance with this Article on the officer of a written statement of charges addressed to the Civil Service Commission. A copy of the disciplinary statement shall be promptly filed with the Human Resources Director of the City.

The written statement shall point out the particular rule or rules alleged to have been violated by the Officer and the specific act or acts alleged to be in violation. In the event of demotion, suspension, or indefinite suspension, the statement informing the officer of disciplinary action and the reason(s) for the action therefore shall also inform the Officer that an appeal may be made had by filing same an appeal in writing with the Human Resources Director, within fifteen (15) calendar days after receipt of said this written statement unless the case is automatically appealed due to alternate service via mail to the officer.²

¹ A28, Sec. Authority of the Chief – COSA grammar language 10-1-2021

² A28, Sec. 3 Written Statement of Charges – AGREED

Section 4. Notice of Right to Appeal.

The Chief or the Chief's authorized designee shall not be required to deliver in person a written statement of charges to the Officer being suspended. The written statement of suspension shall be deemed to have been delivered upon the officer when the written statement (1) is hand- delivered to the suspended Officer by the Chief, the Chief's authorized designee, or by a designated messenger; (2) is delivered to an attorney representing the suspended Officer, or (3) mailed as provided below. A written statement is deemed delivered to the Officer's attorney by handing it to the attorney or by leaving it with another attorney in the attorney's office or a member of the attorney's staff, or by delivering it by any other means that the attorney consented to in writing. If the City attempts in good faith to deliver the written statement as provided in this Section herein, but ~~the such~~ attempts are unsuccessful, the written statement may be mailed by certified mail to the last known address of the suspended Officer. Service is complete upon mailing and the ~~suspension shall be automatically appealed to arbitration as of the date of mailing~~ Officer or Officer's attorney has thirty (30) calendar days to appeal after service by mail, or the matter will be dismissed. The Officer is still required to file a proper notice of appeal not less than ten (10) calendar days prior to the arbitration date.³

Section 5. Arbitrator Defined.

For the purposes of this Article, the term arbitrator shall mean the same as a third-party hearing examiner as referred to in Chapter 143 of the Local Government Code. Appeal from demotion, suspension or indefinite suspension shall be decided by one (1) arbitrator, selected according to this agreement. Upon receiving an appeal from the Officer, the Human Resources Director shall act promptly to notify the Association, the Chief, and the City Manager of the appeal.

For the purposes of this Article, the term arbitrator shall mean the same as a third-party hearing examiner as referred to in Chapter 143 of the Local Government Code. Appeal from demotion, suspension or indefinite suspension shall be decided by one (1), selected according to this agreement. Upon receiving an appeal from the Officer, the Human Resources Director shall act promptly to notify the Association, the Chief, and the City Manager of the appeal.

Section 6. Arbitration Selection and Scheduling.

The counsel for the Officer and the counsel for the Chief of Police shall attempt to mutually agree on an arbitrator. If the parties fail to agree on an arbitrator within fourteen (14) calendar days after the appeal is filed, the Human Resources Director shall within five (5) business days from the expiration of the fourteen (14) calendar days request a list of seven (7) qualified neutrals from the American Arbitration Association. The parties may mutually agree on one of the seven (7) neutrals. If they do not ~~so~~ agree, the parties shall alternatively strike the names on the list within seven (7) calendar days after receipt of the list, and the remaining name shall be the arbitrator. All parties shall act to complete the selection process at the earliest possible date. The arbitrator shall be promptly notified of his/her selection. The parties will not have ex parte communication with the arbitrator. Communication with the arbitrator

³ A28, Sec. 4 Notice of Right to Appeal – AGREED

will be through the counsel for the Chief of Police and the counsel for the Officer jointly. ⁴

Section 7.

The hearing shall be commenced, but need not be completed, within ninety (90) calendar days of the arbitrator's selection. Delay in commencement of the hearing within these time periods may occur due to unavoidable conflicts between the arbitrator and the parties' schedules, or by mutual agreement of parties and for no other reason. However, if the arbitrator selected cannot commence the hearing within ninety (90) calendar days from his selection, and there is no agreement to extend the hearing to a later date by the parties, the parties shall attempt to agree on a substitute arbitrator. If the parties cannot agree upon a substitute within seven (7) calendar days of so learning, another arbitrator shall be selected from a new list of seven (7) names promptly requested from the American Arbitration Association, according to the procedure set out hereⁱⁿ. The arbitrator shall make an award within thirty (30) calendar days of the close of evidence or after receipt of briefs if any in arbitration hearings, and within seven (7) calendar days of the close of evidence in expedited arbitration hearings under 143.057 of the Local Government Code. Post hearing briefs shall only be permitted in standard arbitration hearings, and must be mailed to the arbitrator within such time as is agreed to by the parties, or as directed by the arbitrator. ⁵

Section 8.

A stenographic transcription of the proceedings shall be made only upon written agreement of the parties prior to the commencement of the hearing. Should there be no agreement, the party desiring the transcript may have the transcript made at its sole expense.

Section 9.

The award of the Arbitrator shall state whether the Chief's disciplinary decision(s), which includes the original written statement and charges, is supported in whole or in part by a preponderance of the evidence considering the reliable and probative evidence in the record as a whole. The arbitrator may not substitute his/her judgment for the judgment of the Chief on the disciplinary penalty chosen except as provided below.

Suspensions. If the Chief's decision, or any part thereof, is supported by the evidence, the Arbitrator shall uphold a disciplinary action less than an indefinite suspension unless it is arbitrary, unreasonable, or unrelated to the needs of the service in which case the arbitrator may reduce a suspension to a lesser period.

Indefinite Suspensions. If the Chief's decision, or any part thereof, is supported by the evidence, the Arbitrator shall uphold an indefinite suspension if the Officer's actions demonstrate a substantial shortcoming. The Arbitrator may substitute his/her judgment for the judgment of the Chief on the disciplinary penalty chosen **only** if the Chief fails to establish a substantial shortcoming. If the Arbitrator finds the Chief's decision must be modified under the above standards, this Agreement authorizes the arbitrator to reduce an indefinite suspension to a period

⁴ A28, Sec. 6 Arbitration Selection and Scheduling – City grammar changes

⁵ A28, Sec. 7 - City grammar changes

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greater than 45-days. A “substantial shortcoming” is defined as either (1) a violation or conduct which renders the Officer’s continuance in office in some way detrimental to effective law enforcement and the needs of the Department, or (2) which law and sound community expectations recognize as good cause for depriving the Officer of his/her position.⁶

Section 10.

The following rules shall govern the conduct of arbitration hearings under this Section, and of certain preliminary matters.

A. Both parties shall provide, at least twelve (12) calendar days prior to the date of the hearing, the names and addresses of witnesses expected to be called at the hearing. In the absence of good or excusable cause, the arbitrator may exclude the testimony of a witness upon the failure of a party to disclose such a witness. The parties, in writing, may request discovery from each other concerning the case. Should the opposing party not agree to provide the requested information within seven (7) calendar days of the request, the request shall be deemed denied. The requesting party may then apply to the Arbitrator who shall order such discovery as is appropriate to the nature of the case, consistent with, but not bound by, the rules of discovery in Texas civil cases. In considering the application, the arbitrator shall consider the burden and expense of producing the information, the need of the requesting party, the amount of time available prior to the hearing, and such other matters as he may deem material. In no event shall discovery be requested within seven (7) calendar days prior to the hearing.

B. The arbitrator shall have the power to subpoena witnesses. Where the subpoena request is not opposed by a party, the Human Resources Director shall issue the subpoena in the name of the Arbitrator and such issuance shall be considered the act of the arbitrator. If the subpoena is opposed, the moving party shall apply to the arbitrator for issuance of the subpoena. The City will serve subpoenas on any City employee; otherwise the party issuing the subpoenas shall be responsible for obtaining service.

~~C. In all hearings under this Section, the City shall prove its case by a preponderance of the evidence.~~⁷

~~C. D.~~ All hearings shall be public unless it is expressly agreed in writing by the parties that the hearing shall be closed to the public. In any event, the final decision of the arbitrator shall be public, although public announcement may be reasonably delayed upon request of the parties.

~~D. E.~~ Unless otherwise provided in this Agreement, the conduct of the hearing shall be governed by the rules of the American Arbitration Association.

Section 11.

⁶ A28, Sec 9 – A28, Sec 9 **Note:** COSA counter in GREEN 11-12. SAPOA language was “Suspensions. If the Chief’s decision, or any part thereof, is supported by the evidence, the Arbitrator shall uphold a disciplinary action less than an indefinite suspension and may substitute his/her judgment for that of the Chief only if unless it is arbitrary, unreasonable, or unrelated to the needs of the service.”

⁷ A28, Sec. 10, Subsection C – **AGREED**

Unless Except otherwise provided in this Agreement, the arbitrator shall have all those powers and only those powers vested in the Commission under Chapter 143 of the Local Government Code and the Commission Rules, ~~with respect to suspensions, indefinite suspension, and demotions, with the sole exception of the power to amend such rules.~~⁸

Section 12.

Any notice or statement required to be filed by the Chief of Police or the Officer in a disciplinary proceeding under Chapter 143 of the Local Government Code, under Commission Rules, or under this Agreement, shall be filed with the Human Resources Director of the City.⁹

Section 13.

Hearings conducted by the Commission shall be in accordance with Chapter 143 of the Local Government Code ~~except that the Commission's jurisdiction is similarly limited as an arbitrator's jurisdiction in Section 9 and may not substitute its judgment for the judgment of the Chief on discipline.~~¹⁰

Section 14.

Unless otherwise provided in this Agreement, with respect to demotions, suspensions, and indefinite suspensions as defined in Chapter 143 of the Local Government Code the Officer shall have such right to appeal the arbitrator's decision to district court as he is given in Chapter 143 of the Local Government Code to appeal the Commission's decision, and no greater right.

Section 15.

Unless otherwise provided in this Agreement, in cases of conflict, the provisions of this Agreement will control over Chapter 143 of the Local Government Code, and any other civil service provision or rule, and American Arbitration Association Rules; and Chapter 143 of the Local Government Code, and any other civil service provision, and Civil Service Rules promulgated pursuant to it shall control over American Arbitration Association Rules. Once an Officer receives a formal notification from Internal Affairs, the officer may initiate a written request to the Chief to waive the normal investigative track through Internal Affairs for the investigation to be submitted to an expedited disciplinary track, however in no event can the expedited disciplinary track be requested within ~~thirty (30) sixty (60)~~ calendar days of the expiration of the complaint's one-hundred-and-eighty (180) calendar day timeline in Chapter 143 of the Local Government Code. Both the Officer and the Chief must agree to submit a matter to the expedited disciplinary track for an expedited disciplinary finding. An expedited disciplinary finding is an agreement by the Officer and the Chief that disciplinary action is warranted and enacted, but did not proceed through the conventional track. Any disciplinary action resulting from the expedited disciplinary track must be agreed upon by the Officer and the Chief, and must be enacted within thirty (30) calendar days of the parties'

⁸ A28, Sec. 11 – AGREED

⁹ A28, Sec. 12 – AGREED

¹⁰ A28, Sec. 13 – AGREED

agreement to expedite the disciplinary process, but under no circumstances later than the time limitation as expressed ~~and proscribed in Chapter 143 of the Local Government Code, as applicable in Section 19.~~ Absent an agreement by both the Chief and the Officer, the matter will continue through the regular investigative procedure.¹¹

Section 16.

Notwithstanding any other provision of this Agreement, the Chief shall have authority to suspend an Officer for a period of not more than one hundred and twenty (120) ~~ninety (90)~~ calendar days, or implement an agreed disciplinary action only where the Officer agrees to the disciplinary action in writing. An agreed disciplinary action is an agreement between the Officer and the Chief that may include, but is not limited to, any one, or combination of, a suspension, demotion, or non-disciplinary actions such as professional counseling, re-training, or re-assignment. The Officer shall have no right to appeal such agreed disciplinary actions, and no administrative or judicial body shall have power to review such a suspension or alter the terms of the Agreement.¹²

Section 17.

Any deadline or time restrictions set out in this Agreement with respect to disciplinary proceedings may be modified by written agreement of the parties. However, neither party may be compelled to waive its right to insist upon the deadline and time restrictions provided by the Agreement.

Section 18.

Officers suspended up to a maximum of forty-five working days may, at the Chief's discretion, forfeit either accumulated compensatory time, vacation, bonus time or holiday leave equal to the suspension. Approval of forfeiting time by the Chief shall not be unreasonably withheld and may only be denied because of a consistent overall pattern of substandard performance. The Officer shall have ten (10) calendar days from receipt of notice of the suspension to decide whether or not she/he wishes to forfeit accumulated leave or exercise his appeal rights pursuant to Chapter 143 of the Local Government Code or the Grievance and Arbitration Procedures of this Agreement. The provisions of this Section shall apply solely to suspensions which are agreed to by the Officer, and no appeal to the Commission or to arbitration may be instituted on suspensions where the Officer has forfeited accumulated compensatory, vacation, bonus time or holiday leave pursuant to the terms of this Article.

Section 19.

A. Minor Misconduct. Minor misconduct is defined as slight variances to Department policies, procedures, responsibilities, and expectations. Except as provided in this section of this Article, the Chief and City are precluded from the introduction of evidence or otherwise complaining of any acts or occurrences earlier than the one hundred and eightieth (180th) calendar day immediately preceding the date on which the Chief suspends or demotes the Officer. The Chief may introduce evidence or otherwise complain of any felony Penal Code violation, a felony

¹¹ A28, Sec. 15 – AGREED

¹² A28, Sec. 16 – AGREED

violation of the Controlled Substance Act, a Class A or B Misdemeanor committed by an officer so long as the evidence or complaint is filed within one hundred and eighty (180) calendar days of the Department's first knowledge of the act, provided however, that the statute of limitation for criminal judicial action against the officer involved has not expired. This amendment language shall not be applied retroactively. Only upon written notice in the original written statement of the Chief may any act or occurrence be admissible in a disciplinary hearing in accordance with this section.¹³

B. Major Misconduct. Major misconduct is significant variance(s) to Department policies, procedures, responsibilities, and expectations. Major Misconduct includes including, but not limited to, serious behavior infractions, excessive/unnecessary use of force, discrimination, harassment involving a serious behavior infraction, abuse of official position, improper/unauthorized use of City property, failure to timely report a Major Misconduct of which the Officer was aware, and use of unauthorized intoxicants or unauthorized medications while on duty, when these actions rise to the level of a significant variance. In the original written statement of charges and in any disciplinary hearing conducted pursuant to this Agreement, the Chief may not complain of an act that is discovered earlier than the 180th day preceding the date the Chief suspends the Officer. The act is deemed discovered when the Professional Standards Section (or successor in function) or, a supervisory officer of the rank of Captain or above has actual knowledge of the act.¹⁴

C. Certain Criminal Conduct. The Chief may order an indefinite suspension based on an act classified as a felony or Class A or B misdemeanor after the 180-day period following the date of the discovery of the act by the department if the department head considers delay to be necessary to protect a criminal investigation of the person's conduct. If the Chief intends to order an indefinite suspension after the 180^{-day} period, the Chief must file with the attorney general a statement describing the criminal investigation and its objectives within 180 days after the date the act complained of occurred.¹⁵

D. Evidence. Solely to aid the Commission or arbitrator in the assessment of appropriate discipline and not to prove a charge of a violation of Civil Service Rules or for any other purpose, the Chief and the City may introduce evidence of any prior sustained disciplinary actions that is relevant or likely to show a cause for progressive discipline which have not been set aside on appeal as follows: against the Officer that the Chief used to determine the disciplinary action if the Chief outlined the prior disciplinary action in the original written statement and charges.¹⁶

A. Where the Chief's original written charges include alleged violations of Civil Service Rules constituting acts of intentional violence, the Chief and the City may introduce prior discipline on such other violations found to have been committed within five (5) years immediately preceding the date of said written charges;

¹³ A28, Sec. 19, Subsection A - AGREED

¹⁴ A28, Sec. 19, Subsection B – Unresolved: SAPOA counter 11-12

¹⁵ A28, Sec. 19, Subsection C – AGREED

¹⁶ A28, Sec. 19, Subsection D – Unresolved: COSA counter 11-12 / SAPOA questions deletion of or for any other purpose

~~B. — Where the Chief's original written charges include alleged violations of Civil Service Rules concerning drug or alcohol abuse, any prior discipline on such violations found to have been committed within ten (10) years immediately preceding the date of said written charges;~~

~~C. — Where the Chief's original written charges allege acts of incompetence, all prior discipline for acts of incompetence may be introduced by the Chief or the City so long as adequate records are maintained in accordance with Section 20 below, at the time of the act for which discipline was assessed; and~~

~~D. — Where the Chief's original written charges allege a violation of any other Civil Service Rule, the Chief and the City may introduce prior discipline for a violation(s) of the same rule within two (2) years immediately preceding the date of said written charges, so long as adequate records are maintained in accordance with Section 20 below, at the time of the act for which discipline was assessed;~~

~~E. — Upon execution of this Agreement, suspensions of three (3) working days or less that were not appealed by the Officer shall be automatically reduced to a written reprimand two (2) years after the date the suspension was served on the Officer if the Officer did not have a sustained complaint for the same rule within two (2) years from the date the suspension was served on the officer. Suspensions that were appealed to the Commission or Arbitrator by the Officer are not eligible to be reduced to a written reprimand under this Section. The original suspension paperwork sent to the Commission will reflect the conditions of this Section to reduce the applicable suspension to a written reprimand. The reduction of any suspension contained within this subsection does not qualify for any form of reimbursement to the employee.~~

Section 20.

The City shall develop records, which, to the fullest extent possible, quantify the work done by each Officer in each assignment. Such records shall be available by assignment upon specific request of Officers appealing disciplinary actions or their representatives.

Section 21.

Section 143.056 of the Local Government Code regarding procedures after felony indictment and certain misdemeanor complaints shall be modified to provide:

A. The Officer shall provide written notice to the Chief's office when the Officer's criminal matter is resolved. Should the Chief fail to charge the Officer with a violation of Civil Service Rules within thirty (30) calendar days following written notice by the Officer of the Officer's acquittal or dismissal of the criminal charges, the officer shall be reinstated with all back pay and benefits; and ¹⁷

B. In the event an Officer has been demoted or suspended, either temporarily or indefinitely, for any action which results in the Officer being indicted for a felony or charged with a misdemeanor of Class B or above, no further action may be taken on the Officer's appeal until

¹⁷ A28, Sec. 21, Subsection A - AGREED

the completion of trial on the merits on those charges; except that a hearing on an officer's appeal may be initiated prior to completion of trial on the merits by mutual agreement between the City and the Officer. Delay of an appeal pending the results of criminal proceedings as specified above shall apply both to appeals to arbitration and appeals to the Commission pursuant to this Article.

Section 22.

Pursuant to Section 17, 19 and 21, the Chief or his counsel and the Officer and his counsel may mutually agree in writing to extend the 180-day deadline for disciplinary proceedings by delaying the execution of the disciplinary written statement of charges, if any, to a date no later than thirty (30) calendar days after the final adjudication of the criminal charge pending. By entering into a mutually agreeable written agreement, neither party intends to create, nor does a written waiver directly or indirectly create a past practice.

ARTICLE 29
Internal Security Interview Procedure

Section 1. Investigations Through The Chain Of Command.

Minor allegations of misconduct made against officers which are of the type set out in the Complaint Matrix contained in the General Manual shall be investigated within the Officer's chain of command within twenty-one (21) calendar days of receipt of the written complaint. The Captain of the station/section will conduct the investigation under procedures and guidelines set out in the General Manual. Such an investigation of the Officer shall be confined to the written complaint, and that complaint only. If the Officer is the rank of Captain or above, or if the Officer has no Captain in their chain of command, the Officer's Division Commander, Bureau Commander, or Chief of Police or designee will investigate. Suspensions, if imposed, may be for up ~~to three (3) calendar days~~ to five (5) working days (maximum 40 working hours) if approved by the Chief. If the accused Officer does not agree with the final terms of the contemplated disciplinary decision within five (5) calendar days, the case will be forwarded to the Internal Affairs Unit for further investigation. Suspensions agreed to by an Officer may not be appealed to or altered by the Commission, an arbitrator, or by any court. Investigations through the chain of command do not entitle the Officer to have an attorney present during interviews with his commanding officer, but nothing herein prohibits an officer from seeking advice from an attorney or an Association representative provided it is within the five (5) day time limit. The Officer will be advised in writing of the procedures applicable to the line complaint investigative process by the Captain prior to providing a report or response. Officers shall have a reasonable opportunity to consult with counsel before writing a response, statement, or report resulting from a complaint. The term "complaint" has used in this article does not include questions about performance of duty raised by the Supervisor or fellow Officers.¹⁸

Section 2. Internal Affairs Investigations.

This procedure shall apply to all non-criminal investigations of misconduct by officers except investigations through the chain of command conducted under Section 1 above.

A. An interview of the charged Officer shall take place at a location designated by the investigating Officer, usually at the police facility to which the Officer is assigned or the Internal Affairs Office. If the Officer is required to complete written interrogatories the Officer must do so at the facility designated by the investigating Officer, and the Officer may not remove the interrogatories (or any copy of the interrogatories) from the designated facility. at the Officer's request, such interrogatories shall be provided to the officer on a computer disk so that the officer may complete such interrogatories at a location other than a police facility. The Officer must return the completed interrogatories in accordance with a written agreement between the officer and the investigator in charge of the investigation. An Officer who requests to complete the interrogatories in this manner will do so during their off duty time and will not be compensated by the Department in any way. When the interrogatories are completed, the Officer shall return the computer disk and their responses to the investigator in charge of the investigation for review and clarification by either party. The

¹⁸ A29, Sec. 1 - AGREED

Officer will sign the printed copy of the report in the presence of the investigator.¹⁹

B The Officer shall be informed of the rank, name and command of the Officer in charge of the investigation, and the identity of all persons present during the interview. If an Officer is directed to leave his post and report for interview to another command, the Officer's assigned command shall be promptly notified of the Officer's whereabouts.

C. The Officer under investigation shall be informed ~~twenty-four (24)~~ ~~forty-eight (48)~~ hours prior to being interrogated or asked to otherwise respond to an investigation of the general nature of the investigation, and sufficient information to reasonably apprise the officer of the allegations shall be provided. ~~The Officer shall be allowed to review but not copy body worn camera recordings involving the incident, GPS/AVL readouts and any complaints with redaction of the personal and contact information of complainants, subjects of the complaint, and witnesses to the extent feasible~~ ~~verbatim or photocopy any complaints, affidavits, other written statements, GPS/AVL readouts, video recordings, audio recordings, and photographs,~~ which have been gathered as part of the administrative investigation. The Officer shall not release the provided information to any person other than his attorney or representative.²⁰

[SAPOA counter Sec. 2, Subsection C]

The Officer under investigation shall be informed ~~twenty-four (24)~~ ~~forty-eight (48) hours~~ prior to being interrogated or asked to otherwise respond to an investigation of the general nature of the investigation, and sufficient information to reasonably apprise the officer of the allegations shall be provided; ~~when the Officer arrives for the interview, the Officer~~ shall be allowed to review but not copy ~~verbatim or photocopy any body worn camera recordings involving the incident, GPS/AVL readouts, any~~ complaints, affidavits, other written statements, ~~GPS/AVL readouts,~~ video recordings, audio recordings, and photographs, which have been gathered as part of the administrative investigation. ~~The Internal Affairs Investigator may choose to redact the personal and contact information of the complainants, subjects of complaints, and witnesses to the extent feasible while still reasonably apprising the Officer of the allegations.~~ The Officer shall not release the provided information to any person other than his attorney or representative.²¹

D. The interview/~~interrogatories~~ shall be completed with reasonable dispatch. Reasonable respites shall be allowed. Time shall be provided also for personal necessities, meals, telephone calls, and rest periods as are deemed necessary. Except in exigent circumstances where the seriousness of the complaint warrants an extended interrogation, or when the complaint will expire within sixty (60) calendar days, an Officer shall not be required to submit to any single interview/~~interrogatories~~ for longer than ~~eight (8)~~ ~~six (6)~~ hours. The interviewing Officer shall advise the Officer being interviewed of an estimated time for the interview process. Interview sessions may be held on consecutive days until the interview process is completed. ~~Provisions in Subsection A regarding the removal of interrogatories do not apply to this subsection.~~²²

¹⁹ A29, Sec. 2, Subsection A – AGREED

²⁰ A29, Sec. 2, Subsection C – Unresolved: COSA proposal 11-12

²¹ A29, Sec. 2, Subsection C - Unresolved: SAPOA proposal 10-27

²² A29, Sec. 2, Subsection D – AGREED

E. The Officer shall not be subjected to any offensive language, nor shall he be threatened with transfer, dismissal or other disciplinary punishment. No promise of reward shall be made as an inducement to answering questions. Nothing herein is to be construed so as to prohibit the investigating Officer from informing the Officer under investigation that this conduct can become the subject of disciplinary action resulting in disciplinary punishment.

F. In all cases where an Officer is to be interviewed concerning an alleged act which, if proven, may result in any disciplinary action, the Officer under investigation shall be afforded a reasonable opportunity and facilities to contact and consult privately with an attorney of his own choosing or a representative of the Association before being interviewed. An attorney of his own choosing or a representative may be present during the interview. A representative may not be a Police Officer who is related to the respondent, or a supervisor with involvement in the incident being investigated. Such representative may not participate in the interview except to counsel the Officer, or to assert any rights afforded to the Officer under this article in a manner which does not impair the ability of the investigator to conduct the interview and obtain information directly from the Officer. At any time during the interview the Officer under investigation may request to consult with his attorney or representative in private, prior to continuing the interview, provided that the investigator may impose reasonable limits on such conferences in order to complete a meaningful investigative interview and to obtain a written statement or response from the Officer in the Officer's own words.

G. If an Officer is or maybe likely to be placed under arrest, that is if the Officer under investigation is a suspect or the target of a criminal investigation, the Officer shall be given his rights pursuant to the Miranda Decision. Nothing in this subsection shall be construed to limit the authority of the Chief to conduct administrative investigations nor shall anything in this subsection be construed to relieve the Officer of his obligation to fully cooperate with said investigations, to comply with the Rules and Regulations and Procedures of the San Antonio Police Department, or to provide thorough, complete and truthful responses to requests for written statements and written interrogatories in connection with said administrative investigations. In all investigations where the Officer is subject to a companion or concurrent criminal investigation, the Department shall ensure that any officer's statement gathered as part of the administrative investigation shall not be released to the criminal investigating entity, except as required by a subpoena or required to be disclosed by law or Court decision.

H. The Officer under investigation shall be given an exact copy of any written statement he may execute.

I. The refusal by an Officer to answer pertinent questions concerning any administrative matter may result in disciplinary action.

J. An Officer shall have the right to have the interview tape or digitally recorded, provided the Officer furnishes the tape and the recorder and advises all parties of the recording prior to the beginning of the interview session. The tapes or digital file shall remain in the custody of the Internal Affairs Unit of the Police Department but shall be available for review by the Officer or the Officer's designated representative in the event the interview may result in disciplinary action, or a grievance.

K. No conversation between an Officer and an investigating officer may be recorded without disclosure prior to the conversation by the party making the recording, that it will be recorded. Prior to entering the Internal Affairs office, an Officer must disclose the existence of any recording device in his possession or be subject to disciplinary action. The Chief may authorize the wearing of a concealed recording device during any criminal investigation which may involve an Officer.

L. A polygraph examination may be required of an Officer by the Chief only in the strictest confidence and where the complainant, and any complaining witnesses who give a written statement have been examined and found wholly truthful by a licensed examiner. The fact that an examination is ordered or administered and the results thereof shall not be disclosed by the Chief or the examiner to any person, except following execution of a written agreement between the Chief and the examined Officer.

M. The Chief's office shall provide written notice, in a sealed envelope, to the individual Officer of the final status of any complaint filed with the Internal Affairs Unit where the Officer in question had to respond in writing to the complaint.

N. The results of a formal investigation will be forwarded to the Advisory Action Board for recommendations.

Section 3. Chief's Complaint and Administrative Review ~~Advisory Action~~ Board. ²³

Chief's Complaint and Administrative Review ~~Advisory Action~~ Board (CCARB ~~CAAB~~) as used in this section shall mean the combined Police portion of the ~~Advisory Action~~ Complaint and Administrative Review Board and the Citizen's portion of the Complaint and Administrative Review ~~Advisory Action~~ Board.

A. The Police portion of the ~~Chief's Advisory Action Board~~ CCARB shall consist of seven voting members: a Deputy Chief who shall serve as chairperson; one Captain; one Lieutenant; one Sergeant; one Detective Investigator; and two Patrol Officers. The members shall be appointed by the Chief. Those members shall serve for one hundred and eighty (180) calendar days.

~~B. Except as specifically provided for in this article, the Chief's Advisory Action Board (CAAB) will be conducted in accordance with the San Antonio Police Department's General Manual.~~

~~B. C.~~ The Citizen Advisory Action Board shall act as the Citizen's portion of the CCARB.

1. This Board shall be comprised of seven (7) appointees selected from a panel of fourteen (14) available members appointed as set forth below. Of the initial seven (7) appointees, 3-4 appointees shall be replaced following the expiration of 180-days from the date of their first Board meeting with 3-4 members of the panel of fourteen (14) not having served on the Board in

²³ A29, Sec. 3 Chief's Advisory Action Board – AGREED

the previous 180-days. The rotation of Board members shall continue until such time as all fourteen (14) members have served on the Board and after such time shall continue with no Board appointee serving for more than two (2) consecutive 180-day periods. The Chairman shall be entitled to alter the rotating list in order to coordinate the schedules of the participants. The Chairman may approve agendas for matters not involving the use of force, bodily injury, or unlawful search or seizure, in instances where workload for the Board makes it necessary, which do not require the attendance of the citizen Board members. The Chairman shall schedule any complaint for civilian member participation, upon request by the Officer or the complainant; if it is reasonably possible to do so based on the workload and availability of civilian members. Notice shall be given to the President of the Association. It is understood and agreed that the civilian members shall, nevertheless, be required to hear the full range of disciplinary cases and controversies presented to the Board, in order to develop an accurate sense of context and fairness.

2. Members of the panel for the Citizen Advisory Action Board shall be selected by the City Council from a list of names provided by the City Manager. Prior to providing names to the Council, the City Manager shall solicit applications from qualified citizens of good character, and objective ability, and shall recruit qualified individuals as necessary to have a sufficient list for consideration. The City Manager shall determine whether or not to recommend each of the individuals who apply. In addition, the Chief of Police shall determine whether or not to recommend each of the individuals. The input and recommendation of the San Antonio Police Officer's Association shall also be obtained as to each of the individuals. The City Council shall receive a compilation of the applicants along with the separate recommendations by the City Manager, the Chief of Police, and the Association. Each party agrees that the selections and the final list shall be representative of the diversity of the community. The City Council may select a new member to replace anyone removed from the panel by selecting from any remaining names, or from a new list provided in accordance with the forgoing provisions in the event of vacancies.

3. Citizens appointed to serve on the panel shall meet the minimum requirements for eligibility established under state statute for service on the Fire and Police Civil Service Commission and shall take an oath of office as members of the panel. In addition, no person shall be appointed to serve on this panel who has been indicted for a felony or a crime of moral turpitude, or officially charged with a Class A or B Misdemeanor. Members of the panel shall serve at the pleasure of the City Council, which may remove them, or replace them at any time, with or without cause. Members shall have no right to the position, and shall not be entitled to removal proceedings or a hearing. If not removed or replaced, a member shall serve for a two (2) year period. The City Ethics ordinance shall apply to all members of the Citizen Advisory Action Board.

4. Appointment and selection for the meetings of the Board shall be accomplished in sufficient time to be able to provide each appointee with not less than twenty-four (24) hours of training, including orientation work at Professional Standards, and one shift on the ride along program. The responsibility for the training of each new member of the panel shall fall upon the Commander of the Professional Standards Section.

C. [Right to Privacy](#)

1. ~~5.~~ An accused Officer has a right to privacy and all members of the CAAB shall

respect that right to privacy, and shall have a duty to maintain the confidentiality of privileged information. Each member of the Uniform and Citizen Board shall sign a pledge of confidentiality, agreeing to maintain the right of privacy as to privileged matters under applicable law. Any violation of this right shall be grounds for disqualification or removal from the panel, as set forth below. "Right to privacy" shall mean only the right of any accused Officer of the Department to have the allegations, facts, testimony and evidence brought before the Board held in confidence by the members hearing the case, and shall not extend to include any public information or information imparted to the Board members from public information, or from individuals not officially connected to the Internal Security process. The Chairman shall keep and maintain all records of the Board, and no members shall have or maintain any records other than during the meetings of the Board, or on Department premises, in connection with their official duties. This article shall not be interpreted to impair or effect the right of any person, including the citizens on the Board, to make report of facts to the Chief of Police, the District Attorney, or the FBI, or to testify under subpoena, the rules of discovery, or order of any court; nor shall this article be interpreted to impair or affect the rights of any Officer under *Garrity vs. New Jersey* or its progeny and *Miranda vs. Arizona* or its progeny

2. 6. If any member of the Citizen Advisory Action Board is accused by an Officer of a violation of the right to privacy, the Civil Service Commission shall convene and if a determination is made that a member of the Citizen Advisory Action Board violated an Officer's right to privacy, then the Civil Service Commission may remove that member. If the breach of privacy involves a direct report of confidential information by the member to the public or the press, removal by the Civil Service Commission shall be mandatory. In any event, the Civil Service Commission shall send a report of its findings and action to the City Council. The purpose of these hearings shall be to protect the interests of accused Officers and the complainants, and shall not give rise to any rights on the part of the member accused of a breach of right to privacy.

D. Except as specifically provided for in this article, the CCARB will be conducted in accordance with the San Antonio Police Department General Manual.

E. D. All members of the ~~Chief's Advisory Action Board~~ CCARB shall be given the opportunity to review each case that will be presented for consideration subject to the Chief's approval of exceptions, based on workload, as noted above.

F. E. The Chairperson of the ~~Chief's Police Advisory Action Board~~ CCARB shall be responsible for the maintenance of the confidentiality of all files submitted for review by the CAAB.

G. F. The Chairperson of the CCARB ~~CAAB~~, on recommendation from any member of the CCARB ~~CAAB~~ may elect to hear testimony from complainants or responding Officers. Attendance to these boards meetings where testimony is requested are entirely voluntary and complainants or responding Officers may elect to remove themselves at any stage of the questioning by either board without fear of reprisal. The Chairperson of the CCARB ~~CAAB~~ shall determine the manner in which all meetings shall be conducted and shall be the determining factor as to the hearing of testimony or attendance by any person. No responding Officer or complainant shall have the right to be represented by counsel, but may be accompanied by an observer.

~~H. G.~~ Each board shall make independent recommendations and forward these recommendations to the Chief of Police. Such recommendations are advisory only and are not binding on the Chief. The Citizen Advisory Action Board may not conduct a separate independent investigation but may recommend to the Chief of Police that further investigations should be undertaken.

~~J. H.~~ Any matter which is brought before the ~~CCARB~~ ~~CAAB~~, where a final ruling by the Chief of Police has occurred, the Chief of Police shall direct the Commander of the Professional Standards Section to notify the Complainant(s) and accused Officer(s) as to the final disposition of the case within twenty-one (21) calendar days.

Section 4. Crash Evaluation and Review Board ~~Chief's City Vehicle Accident Advisory Action Board.~~²⁴

A. The Chief's Advisory Action Board as described in Section 3 of this Article will no longer review cases involving City motor vehicle accidents. All cases involving City motor vehicle accidents previously assigned to ~~the Chief's Advisory Action Board~~ Crash Evaluation and Review Board will be assigned to the Chief's City Vehicle Accident Advisory Action Board in accordance with this section.

B. The ~~City Vehicle Accident Advisory Action~~ Crash Evaluation and Review Board will consist of one (1) Captain, one (1) Sergeant, one (1) Detective Investigator and two (2) Patrol Officers appointed by the Chief. The Captain shall serve as chairperson. Members shall serve from January through June or from July through December of each calendar year.

C. Except as specifically provided for in this Article, the Chief's City Vehicle Accident Advisory Action Board will be conducted in accordance with General Manual provisions and the Chief's Advisory Action Board outlined in this Article.

D. An Officer will be retrained for an accumulation of points or the number of accidents at the Chief's discretion. The occurrence of two chargeable accidents within a two-year period will serve as a baseline for the Chief or the Board to review individual cases and training needs. Ultimately, retraining will be determined on the basis of severity of the accidents, which may drastically differ from one case to another.

²⁴ A29, Sec. 4 Chief's City Vehicle Accident Advisory Action Board – **AGREED**